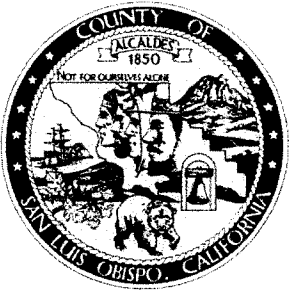


**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Health Agency/Public Health		(2) MEETING DATE August 1, 2006		(3) CONTACT/PHONE Greg Thomas, M.D., (805) 781-5520	
(4) SUBJECT Request for Board direction regarding implementation of a Medical Marijuana Identification Card Program					
(5) SUMMARY OF REQUEST Proposition 215 – California Compassionate Use Act of 1996 – was approved by California voters in 1996. Prop 215 provides protections to seriously ill persons who have a recommendation from their physicians to use marijuana for medical purposes. SB 420 was approved in 2003, creating Sections 11362.7 through 11362.83 of the California Health and Safety Code, to address various problems with Proposition 215 and to make verification simpler. The intent of SB 420 was to help law enforcement and qualified patients by creating a form of identification for qualified patients that is official and uniform throughout the State. SB 420 <b>requires</b> each California county to implement a Medical Marijuana ID Card Program and to begin issuing cards to qualified patients and qualified primary caregivers. The Public Health Department is prepared to implement the program in this County if the Board directs staff to proceed.					
(6) RECOMMENDED ACTION It is recommended that the Board provide direction to Health Agency staff regarding implementation of a Medical Marijuana Identification Card Program					
(7) FUNDING SOURCE(S) Fees		(8) CURRENT YEAR COST \$45,000 - \$60,000		(9) ANNUAL COST \$45,000 - \$60,000	
(10) BUDGETED? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): Public Health staff has met with representatives of the District Attorney and County Administration, and has discussed the item with the Sheriff. County Counsel has opined that the County is mandated to implement a Medical Marijuana ID Card Program pursuant to SB 420.					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, How Many? <u>1</u> <input type="checkbox"/> Permanent <input type="checkbox"/> Limited Term <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Temporary Help					
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input checked="" type="checkbox"/> All			(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board <u>N/A</u>
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Board Business (Time Est. <u>60</u> )			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input checked="" type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input checked="" type="checkbox"/> N/A Date _____
(23) ADMINISTRATIVE OFFICE REVIEW <div style="text-align: center; margin-top: 20px;"><i>ok Dan Buckshi</i></div> <div style="text-align: right; margin-top: 20px;"><i>E-1 8-1-06</i></div>					



# SAN LUIS OBISPO COUNTY HEALTH AGENCY

## PUBLIC HEALTH DEPARTMENT

2191 Johnson Avenue • P.O. Box 1489  
San Luis Obispo, California 93406  
805-781-5520 • FAX 805-781-1048

*Jeff Hamm*  
**Health Agency Director**

**Gregory W. Thomas, M.D., M.P.H.**  
**County Health Officer**  
**Public Health Administrator**

To: Board of Supervisors

From: Jeff Hamm, Health Agency Director *J Hamm*  
Greg Thomas, M.D., M.P.H., Health Officer/Public Health Administrator *Greg Thomas*

Date: August 1, 2006

Subject: Request for Board direction regarding implementation of a Medical Marijuana Identification Card Program

### Recommendation

It is recommended that your Board provide direction to Health Agency staff regarding implementation of a Medical Marijuana Identification Card Program.

### Discussion

Proposition 215—California's Compassionate Use Act of 1996—was approved by California voters in 1996. Prop 215 provides protections to seriously ill persons who have a recommendation from their physicians to use marijuana for medical purposes. Prop 215 also provides protections to the physicians and primary caregivers who assist these seriously ill persons.

SB 420 was approved in 2003, creating Sections 11362.7 through 11362.83 of the California Health and Safety Code, to address various problems with Proposition 215 and to make verification simpler. The intent of SB 420 was to help law enforcement and qualified patients by creating a form of identification for qualified patients that is official and uniform throughout the State. SB 420 requires the California Department of Health Services to create the Medical Marijuana Program. This program requires the development and maintenance of an online registry and verification system for Medical Marijuana Identification Cards or "MMICs", which are issued by counties to qualified patients and their primary caregivers. The online statewide registry allows law enforcement to easily verify that a MMIC is valid, thus identifying the cardholder as a legal marijuana user under State law and freeing up peace officers' time serving the community.

SB 420 **requires** each California county to implement a Medical Marijuana ID Card Program and to begin issuing MMICs to qualified patients and qualified primary caregivers. The Public Health Department is prepared to implement the program in this county if your Board directs staff to proceed.

*WJ*

If directed to implement the program, the Health Agency's Public Health Department would ensure the identity of the patient and/or primary caregiver, that the physician making the recommendation for medical marijuana is currently licensed to practice medicine in California, and that he/she has recommended use of marijuana for one or more of the illnesses/conditions for which marijuana is an appropriate remedy. The County would submit to the State a photograph and data on each applicant. The State would prepare the ID Card, mail it back to the County, and include it in their online registry.

The County has limited discretion for policy setting within the Medical Marijuana ID Card Program. If authorized to proceed, Public Health staff recommends the following:

- We may establish the fee for processing the applications, which is expected to cost between \$75 - \$100; this is addressed more in the "Financial Considerations" section below.
- We may establish a maximum number of marijuana plants that one patient may possess. The State regulations allow Counties to allow patients or qualified caregivers to possess 8 oz. or more of dried marijuana. The PHD is recommending adopting the State's minimum of 8 oz. of dried marijuana and either 6 mature or 12 immature plants per qualified patient.
- We may establish a maximum number of patients that one qualified primary caregiver may care for; and because primary caregivers are required to be consistently responsible for the housing, health and safety of a patient, the PHD is recommending a maximum of ten patients per primary caregiver.
- We may decide how much and in what form application information will be retained in the PHD, and we wish to retain only the legal minimum as required by State law, which merely states that counties must "maintain records of identification card programs".

#### Other Agency Involvement/Impact

Public Health staff has met with representatives of the District Attorney and County Administration, and has discussed the item with the Sheriff.

County Counsel has opined that the County is mandated to implement a Medical Marijuana ID Card Program pursuant to SB 420.

The District Attorney provided the following information: "The California Attorney General's Office has been requested to issue a formal opinion regarding issues involved with medical marijuana, including whether a government employee who participates in the administration and issuance of medical marijuana identification cards aids and abets the commission of a federal crime. Letters from the Senior Assistant Attorney General are attached. The District Attorney and Sheriff believe that because the Attorney General will be rendering an official legal opinion on this question in the next few months, it would seem prudent for the Board of Supervisors to wait until that opinion is issued before deciding to implement a program which hinges on the answer to the very question under consideration by the Attorney General.

Regarding the request for an Attorney General opinion, County Counsel has opined that they see no reasons to change their analysis, which does not depend on the validity of the ID card program statutes. Their conclusion is that, regardless of the ultimate validity of the statutes, local officials are obliged to obey these statutes because (a) it is not with a local official's power to

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decide, on his/her own, whether statutes are invalid unless it is patently obvious that the statutes are invalid (under our system, only the courts can decide the validity of statutes), and (b) these particular statutes are not patently invalid, especially in view of the fact that a Court of Appeal relied on a portion of the same statutes in reversing a criminal conviction. This was the clear holding of the California Supreme Court in the San Francisco same-sex marriage case: Local official could not ignore state laws limiting marriage to man-woman couples based on their personal belief that those laws are unconstitutional.

### Financial Considerations

The Health Agency has estimated the cost of administering each Medical Marijuana ID Card application in 2006/07 will be between \$75 - \$100. Staff will share cost estimates with the Auditor for review and concurrence, should the Board provide direction to implement the program. \$13 of each application fee must be remitted to the State MMP, and Counties can only charge 50% of the established fee to MediCal recipients. Approximately 600 applications are expected in the first year. Temporary help would be utilized during the first year of implementation to determine the actual number of applicants and time required to administer the program. The Medical Marijuana ID Cards must be reissued annually.

Should your Board direct PHD staff to implement the Program, we will return to the Board with a fee that has been reviewed and approved by the Auditor, and with a budget adjustment to cover the costs and revenue of this program.

### Results

Implementation of a Medical Marijuana ID card program an MMP will allow patients with certain medical conditions who have a written recommendation from a licensed physician of California in good standing, to possess limited amounts of marijuana without fear of arrest and prosecution. This supports the Public Health Department's mission of "improving and maintaining community health" and the County's goal of "striving to create a healthy community".

Another result would be insuring that San Luis Obispo County is in compliance with the SB 420 State mandate to implement the program.

*Attachments:*

- 1) *Memorandum from Dan Hilford. Assistant District Attorney, including letters from the California Attorney General's Office*
- 2) *State of California Medical Marijuana Program County Handbook, including Health and Safety Code Sections 11362.7 – 11362.83*

EE-1  
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# MEMORANDUM

ADMINISTRATIVE OFFICE  
06 JUL 12 AM 9 49

TO: Dan Buckshi, County Administrative Office

FROM: Daniel A. Hilford, Assistant District Attorney *DAH*

DATE: July 10, 2006

SUBJECT: Board Letter / Medical Marijuana Identification Card

---

The California Attorney General's Office has been requested to issue a formal opinion regarding issues involved with medical marijuana, including whether a government employee who participates in the administration and issuance of medical marijuana identification cards aids and abets the commission of a federal crime. (Please see the attached letters from Senior Assistant Attorney General Rod Lilyquist and the attorney for the California State Sheriff's Association.)

Because the Attorney General will be rendering an official legal opinion on this question in the next few months, it would seem prudent for the Board of Supervisors to wait until that opinion is issued before deciding to implement a program which hinges on the answer to the very question under consideration by the Attorney General.

c: Dr. Greg Thomas, Public Health

*WLB*



"Cathy Coyne"  
<ccoynne@calsheriffs.org>  
06/08/2006 02:24 PM

To "Pat Hedges \((E-mail)\)" <phedges@co.sio.ca.us>  
cc  
bcc  
Subject As Requested: AG Opinion Request 05-1201

Sheriff Hedges -

Below is the AG Opinion Request. ALSO - I am FAXING to you the response from Martin Mayer to Deputy Attorney General Daniel Stone. Unfortunately, I do not have his response in electronic format. Please let me know if you need anything further. Thanks! Cathy

Full text of letter - Subject: Request for views for AG Opinion No. 05-1201

110 WEST A STREET, SUITE 1100  
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P.O. BOX 85266  
SAN DIEGO, CA 92186-5266  
Public: (619) 645-2001  
Facsimile: (619) 645-2489  
Direct Dial: (619) 645-2210  
E-Mail: Rodney.Lilyquist@doj.ca.gov  
December 8, 2005

TO WHOM IT MAY CONCERN:

RE: Opinion No. 05-1201

We have received a request from Kern County District Attorney Edward Jagels and Ventura County District Attorney Gregory Totten for an opinion of the Attorney General on the following questions:

1. Does a peace officer commit a crime under federal law if he returns marijuana to an individual who produces a valid medical marijuana card or otherwise demonstrates possession of a valid marijuana prescription?
2. Does a government employee participating in the administration and issuance of medical marijuana identification cards pursuant to Health and Safety Code sections 11362.7-11362.78 aid and abet the commission of a federal crime?
3. Does a judge who orders the return of any quantity of marijuana deemed to fall within the "medical marijuana" exception of Health and Safety Code sections 11362.5-11362.83 aid and abet the commission of a federal crime?

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It is the policy of our office to solicit the views of all interested parties prior to issuing an opinion. If you would like to submit comments, a response by February 6, 2006, would be most helpful; materials received after such date will nonetheless be considered. Views submitted will be treated by our office as public records under the Public Records Act. Please address your views to: Deputy Attorney General Daniel G. Stone, Post Office Box 944255, Sacramento, CA 94244-2550; telephone (916) 324-5166; or via e-mail Dan.Stone@doj.ca.gov.

Information regarding the status of this opinion request and a copy of the opinion when it is issued, as well as opinion research materials and a description of our opinion writing policies, are available on the Opinion Unit's Internet website, [www.ag.ca.gov/opinions](http://www.ag.ca.gov/opinions).

Sincerely,

RODNEY O. LILYQUIST  
Senior Assistant Attorney General  
Chief, Opinion Unit  
For BILL LOCKYER  
Attorney General  
ROL:jdj

Cathy Coyne, Legislative Analyst  
California State Sheriffs' Association  
1450 Halyard Drive, Suite 6  
West Sacramento, CA 95691  
[ccoyne@calsheriffs.org](mailto:ccoyne@calsheriffs.org)  
916-375-8000 Phone / 916-375-8017 Fax

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APR/03/2006/MCN 01:27 PM JONES AND MAYER

FAX No. 7144461448

P.002

J&amp;M

JONES &amp; MAYER

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Harold W. Rader  
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Michael R. Caplan  
Jeffrey B. Love

February 6, 2006

Consultant  
Marvin D. Robinson  
Steven H. Shively

Professional Law Corporation

Daniel G. Stone  
Deputy Attorney General  
Post Office Box 944255  
Sacramento, Ca 94244

Re: Opinion Number 05-1201

Dear Mr. Stone:

I am writing to you on behalf of the California State Sheriffs' Association (CSSA), the California Police Chiefs' Association (CPCA), and the California Peace Officers' Association (CPOA), in response to your request for input on the questions posed to the Attorney General regarding California's medical marijuana law. Kern County District Attorney Edward Jagels and Ventura County District Attorney Gregory Totten requested the Attorney General to opine on the following questions:

1. Does a police officer commit a crime under federal law if he returns marijuana to an individual who produces a valid medical marijuana card or otherwise demonstrates possession of a valid marijuana prescription?
2. Does a government employee participating in the administration and issuance of medical marijuana identification cards pursuant to Health and Safety Code sections 11362.73-11362.78 aid and abet the commission of a federal crime?
3. Does a judge who orders the return of any quantity of marijuana deemed to fall within the "medical marijuana" exception of Health and Safety Code sections 11362.5-11362.83 aid and abet the commission of a federal crime?

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February 6, 2006

Re: Opinion Number 05-1201

It is the opinion of the three Associations, on whose behalf we are writing, that the answer to all three questions must be in the affirmative. (We note, just for the record, that although the first question refers to the possession "of a valid marijuana prescription," the law merely requires a recommendation from a physician since, pursuant to federal law, it is a crime for a physician to issue a prescription for marijuana.) Our conclusion that all three questions must be answered in the affirmative is based upon court decisions, as well as the Supremacy Clause of the United States Constitution.

In 1970 the United States Congress enacted the Comprehensive Drug Abuse Prevention and Control Act which was implemented to regulate drugs and prevent their abuse throughout the nation. The Controlled Substances Act, 21 U.S.C. Section 801 et seq., is a part of that law and, among other things, makes it unlawful to manufacture, distribute, dispense or possess any drug except as authorized by the Act. Drugs are placed into five categories, four of which allow limited use of the drugs when it is determined that there is "a useful and legitimate medical purpose." The first category listed in the Federal Controlled Substances Act absolutely prohibits the possession or use of drugs for which there is no currently accepted medical use and marijuana is listed in the first category.

In 1996 voters in the State of California passed Proposition 215 which was subsequently classified as the Compassionate Use Act, California Health and Safety Code Sections 11362.7-11362.9. The Act purports to allow California citizens to possess and cultivate marijuana for medicinal purposes if its use is "approved" or "recommended" by a physician. Furthermore, in 2003, the California Legislature passed SB 420 which authorized the California Department of Health Services to issue California identification cards to medical marijuana users. Prior to the year 2003, various cities and counties implemented programs to assist in the implementation of medical marijuana programs. Shortly after the passage of SB 420, the California Attorney General issued an opinion that the State Medical Marijuana Program would substitute for those programs established by cities and counties, but did not declare the local programs invalid.

As such, there has been much confusion regarding the current status of the law and has led to varying opinions by city and county attorneys as to whether the local jurisdictions have the option of continuing to regulate medical marijuana use in their own jurisdictions. Along with that debate comes, among other things, questions regarding whether or not cities can regulate and/or allow medical marijuana dispensaries within their boundaries.

The issue appeared to be resolved in June of 2005 when the United States Supreme Court ruled in the case of Gonzales v. Raich, 125 S.Ct. 2195 and declared that the Controlled Substances Act (CSA) was constitutional and prohibited the local cultivation and use of marijuana despite the passage of a state law to the contrary. The Supreme Court stated that when Congress enacted the comprehensive Drug Abuse Prevention and Control Act of 1970, it was for the purpose of consolidating various drug laws into a comprehensive statute, providing meaningful regulation over legitimate sources of drugs to prevent diversion into illegal channels. The Court went on to say that the purpose of the Act was to strengthen law enforcement tools against international, as well as

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interstate, drug trafficking. In order to effectuate those goals, "Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except as authorized by the CSA." The Supreme Court stated that "Congress's power to regulate purely local activities, that are a part of an economic class of activities that have a substantial effect on interstate commerce," is firmly established. "When Congress decides that the total incidences of a practice poses a threat to a national market, it may regulate the entire class."

In addressing the authority of Congress to regulate, pursuant to the Commerce Clause, the Supreme Court stated, it "need not determine whether respondent's activities, taken in the aggregate, substantially affect interstate commerce in fact, that only whether a "rational basis" exists for so concluding. (Citations omitted.) Given the enforcement difficulties that attend distinguishing between marijuana cultivated locally and marijuana grown elsewhere, and concerns about diversion into illicit channels, we have no difficulty concluding that Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole in the CSA."

The Supreme Court, in the Raich decision, stated that "the CSA designates marijuana as contraband for *any purpose*; in fact, by characterizing marijuana as a Schedule I drug, Congress expressly found that the drug has no acceptable medical uses. Moreover, the CSA is a comprehensive regulatory regime specifically designed to regulate which controlled substances can be utilized for medicinal purposes, and in what manner. Thus, even if respondents are correct that marijuana does have accepted medical uses and thus, should be redesignated as a lesser scheduled drug, the CSA would still impose controls beyond what is required by California law." The Court then stated, "accordingly, the mere fact that marijuana - like virtually every other controlled substance regulated by the CSA - is used for medicinal purposes cannot possibly serve to distinguish it from the core activities regulated by the CSA."

The Raich court states that, "limiting the activity to marijuana possession and cultivation "in accordance with state law" cannot serve to place respondent's activities beyond Congressional reach. The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail." The Supreme Court also stated that, "the notion that California law has surgically excised a discrete activity that is hermetically sealed off from the larger interstate marijuana market is a dubious proposition, and, more importantly, one that Congress could have rationally rejected."

Although the Supreme Court did not specifically rule that the California law allowing medical marijuana use was unconstitutional, it did specifically state that federal law prohibiting the use of marijuana, in essence, trumps state law. Under the Supremacy Clause of the Constitution, a state law in conflict with a federal law is invalid. Although there may not be any state prosecution for violation of a state law, that in no way changes the finding of the United States Supreme Court that it is unlawful under federal law to manufacture, distribute, dispense or possess marijuana, even for medical purposes.

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February 6, 2006

Re: Opinion Number 05-1201

Turning our attention, therefore, to the first question posed, the conclusion is inevitable. Since the CSA makes it unlawful to distribute or dispense marijuana to individuals not otherwise authorized by the Act to be in possession of the drug, a peace officer would be committing a crime under federal law if he or she returned marijuana to an individual, even one who possessed a medical marijuana card or demonstrated a recommendation from a doctor pursuant to California's law.

This particular issue has already been addressed by the California courts in the case of Chavez v. Superior Court of Orange County (The People), 123 Cal.App.4th 104 (2004). Chavez had been arrested for cultivation and possession of marijuana for sale and his case was subsequently dismissed. He then filed a motion seeking the return of a reasonable amount of the marijuana for medicinal purposes, arguing that he was entitled to possess, use and cultivate marijuana pursuant to Health and Safety Code Section 11362.5. The Court of Appeal stated "although the Compassionate Use Act makes clear it was the intent of California voters "to insure that seriously ill Californians have the right to obtain and use marijuana for medical purposes..." noticeably absent from the statute is a provision which requires, or authorizes, the court to return confiscated marijuana." The court states that, "because the Compassionate Use Act makes no provision for return of marijuana, we are compelled to apply the existing statutes, specifically, Section 11473.5 which requires destruction of Schedule I controlled substances."

As to questions numbered two and three, since it has already been established by the United States Supreme Court in Gonzalez v. Raich that the distribution or dispensing of marijuana is a crime under federal law, anyone who assists an individual in the possession or distribution of the drug or, as in the case of the judge who orders the return of the illicit substance to an individual not authorized to possess it, would be aiding and abetting the commission of a federal crime.

To "aid" is to help, to assist or to support and to "abet" is to encourage, countenance or approve. It appears axiomatic that if a government employee administers and issues medical marijuana identification cards enabling a person, not otherwise authorized by federal law, to secure and possess marijuana, that government employee is assisting and/or encouraging the commission of a federal crime. The same applies to a judge who orders, in almost all cases, a peace officer to return a substance defined by federal law to be illicit, that judge is assisting or encouraging and, in fact, compelling that peace officer or other government employee to commit a federal crime.

The Supreme Court in the Raich decision made it abundantly clear that only Congress could change the current state of the law, by re-classifying marijuana as something other than a Schedule I drug. It is important to note that, following the Raich decision, on June 15, 2005, Congress turned down an amendment, by a vote of 264 to 161, which would have blocked the Justice Department from prosecuting people in the ten states where the practice of using marijuana for medical purposes had been legalized. As a result, and until other action changes the current state of the law, the use, transfer, possession, or cultivation of marijuana is a crime under federal law and punishable as a felony.

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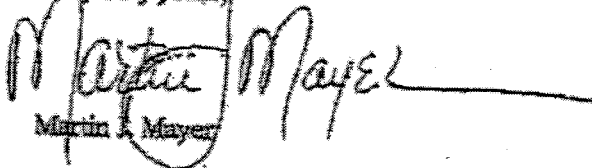
February 6, 2006

Re: Opinion Number 05-1201

Although there may, in fact, be compassionate reasons to allow seriously ill individuals to consume marijuana for medicinal purposes, at this point of time that would be illegal. As such, the answer to the three questions posed must be in the affirmative.

On behalf of CSSA, CPCA and CPOA, we thank you and the Attorney General for soliciting our input prior to the issuance of a formal opinion in this matter. We sincerely hope that our analysis of the current state of the law is of assistance to you in drafting an opinion on this significant, albeit difficult, area of the law. As always, should you have any questions or wish to discuss this in greater detail please do not hesitate to contact me.

Very truly yours,

  
Martin J. Mayer

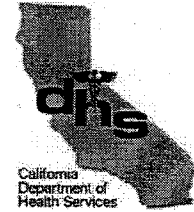
MLM/dm

cc: Sheriff William Kolender, President, CSSA  
Chief Steve Krull, President, CPCA  
Chief Patrick Smith, President, CPOA

cc: Honorable Edward Jagels, District Attorney, Kern County  
Honorable Gregory Totten, District Attorney, Ventura County

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**State of California  
Medical Marijuana Program  
County Handbook**

October 2005

10-1  
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## **Introduction**

The County Handbook for the Medical Marijuana Program (MMP) provides counties with the protocols, procedures, and forms that are needed to administer the MMP. The Handbook's Table of Contents generally follows the sequence of applying for a Medical Marijuana Identification Card (MMIC). Forms and applicable legislation and statutes are located in the Handbook's appendices.

## **Background**

In 1996, California voters passed Proposition 215, also known as the Compassionate Use Act (Act). The Act made the medical use of marijuana legal in California. However, it did not provide an effective way for law enforcement to properly identify patients who were legally protected by the Act.

The intent of Senate Bill (SB) 420 (Chapter 875, Statutes of 2003, Vasconcellos) was to assist law enforcement in identifying Californians who were protected by the Act and to provide patients and their caregivers with a form of identification that would protect them against wrongful arrest and prosecution.

SB 420 also required the State of California Department of Health Services (CDHS) to establish and maintain a statewide medical marijuana identification card and registry program for qualified patients and their caregivers. As a result, the MMP was established in 2004. The MMP Unit is located within the CDHS Health Information and Strategic Planning Division's Office of County Health Services (OCHS) Branch.

The MMP allows qualified patients to apply for and receive identification cards for themselves and their primary caregiver through their county of residence. Participation in the program is optional. Statutes governing the MMP can be found in Sections 11362.7 through 11362.83 of the Health and Safety (H&S) Code. Regulations for the Program are located in the California Code of Regulations, Sections 39001 through 39009 of Title 17.

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## 1.0 - Definitions

**1.1 - “Administering agency”** means the county health department or another health-related governmental or nongovernmental entity or organization designated by the county’s board of supervisors to administer the county’s Medical Marijuana Program (MMP).

**1.2 - “Appeals form”** means the Application Denial Appeals Form (DHS Form No. 9043).

**1.3 - “Applicant”** means a qualified patient or a legally designated representative of a qualified patient who is engaged in the process of obtaining an identification card for themselves or their primary caregiver. A primary caregiver may not apply for a card unless he/she is the legal representative of the qualified patient.

**1.4 - “Application form” or “Application”** means Application/Renewal Form (DHS Form No. 9042) that has been submitted by a qualified patient or legally designated representative seeking to obtain a MMIC.

**1.5 - “Attending physician”** means a doctor of medicine or osteopath who: possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California; has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling or referral of a patient; has performed a medical examination of that patient before recording in that patient’s medical record an assessment of the patient’s medical condition and whether the patient’s condition warrants the use of medical marijuana.

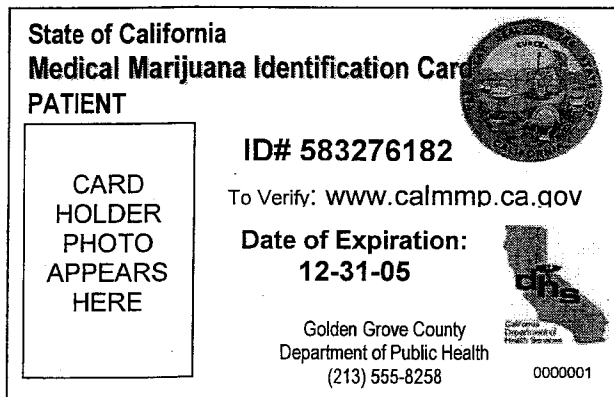
**1.6 - “CDHS”** means the State of California Department of Health Services.

**1.7 - “Emancipated minor”** is a minor who has entered into a valid marriage (whether or not the marriage is dissolved), is on active duty with the armed forces of the United States, or has received a court-issued declaration of emancipation. A declaration of emancipation is conclusive evidence that a minor is emancipated [(Family Code Sections 7002 and 7122(c))].

**1.8 - “Emergency card”** means a temporary ID card authorized and issued by the administering agency through the county MMP on an emergency basis.

**1.9 - “Identification card,” “ID,” or “MMIC”** means the photo identification card developed by CDHS and issued by an administering agency to a qualified patient who is authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any. An example of the card is shown on the following page:

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**1.10 - “Legal representative”** means a person acting on the applicant’s behalf when the applicant lacks the capacity to make medical decisions and includes, but is not limited to: (1) a conservator with authority to make medical decisions; (2) an attorney-in-fact under durable power of attorney for health care or surrogate decision maker authorized under another advanced health care directive; (3) any other individual authorized by statutory or decisional law to make medical decisions for the applicant; and/or (4) the primary caregiver if he or she meets the requirements as described in numbers one through three of this section. If the applicant is under 18, the legal representative may be a parent with the legal authority to make medical decisions, a legal guardian or other person or entity with the legal authority to make medical decisions for the applicant.

**1.11 - “Medical documentation”** means accurate reproductions of the applicant’s medical records or appropriate documentation showing the attending physician has stated that the person has been diagnosed with a serious medical condition and that the use of medical marijuana is appropriate. Attending physicians may use the Written Documentation of Patient’s Medical Records Form (DHS Form No. 9043) for this purpose.

**1.12 - “Medical Marijuana Program”** means the implementation and administration of the applicable provisions of SB 420 (Statutes of 2003) by the state and/or county.

**1.13 - “Medical Marijuana Program Unit”** means the Unit within CDHS’ Office of County Health Services that administers the State’s MMP.

**1.14 - “Medical Marijuana Automated System” or “MMAS”** means the online automated system developed and maintained by CDHS. The administering agency uses the MMAS to enter a limited amount of information when requesting an MMIC or Emergency Card. The MMAS initiates the production of a card and enters the patient and/or caregiver into the CDHS web-based card verification system. For specific instructions on using the MMAS, please refer to the *MMAS Users’ Manual*.

**1.15 - “Primary caregiver”** means a person who: (1) is at least 18 years of age unless the primary caregiver is an emancipated minor or the parent of a minor child who is a qualified patient; (2) is designated by the applicant or his/her legal representative to be the

primary caregiver; (3) has consistently assumed responsibility for the housing, health, or safety of a qualified patient; and (4) is one of the following:

(A) An individual who: (i) resides in the same city or county as the qualified patient and may have multiple qualified patients in the same city or county; or (ii) resides in a city or county other than that of the qualified patient if he or she has been designated as the primary caregiver by only the qualified patient. (If an individual has been designated as the primary caregiver by two or more qualified patients, the primary caregiver must reside in the same city or county as the qualified patients.)

(B) The owner or operator, or no more than three employees who are designated by the owner or operator, of a facility providing medical care and/or supportive services as follows:

- (i) Clinics licensed in accordance with Chapter 1 (beginning with Section 1200) of Division 2 of the H&S Code. These are organized outpatient health facilities that provide direct medical, surgical, dental, optometric, podiatric, or psychological advice, services or treatment to patients who remain less than 24 hours. These facilities may provide diagnostic or therapeutic services to patients in the home incidentally to care provided at the clinic facility. These can include community clinics, free clinics, and/or specialty clinics such as surgical, chronic dialysis, or rehabilitation.
- (ii) Health care facilities licensed in accordance with Chapter 2 (commencing with Section 1250) of Division 2 of the H&S Code. This means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer. These are, for example, general acute care hospitals, acute psychiatric hospitals, skilled nursing facilities, congregate living health facilities, and/or correctional treatment centers.
- (iii) Residential care facilities for persons with chronic life-threatening illness licensed in accordance with Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the H&S Code. These are facilities that care for persons with HIV, AIDS, or both.
- (iv) Residential care facilities for the elderly licensed in accordance with Chapter 3.2 (commencing with Section 1569) of Division 2 of the H&S Code.
- (v) Hospices or home health agencies licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the H&S Code. These are private or public organizations that provide or arrange for the provision of skilled nursing services to persons in their residence.

**1.16 - “Qualified patient”** means a person with a “serious medical condition” who is entitled to the protections of the Act.

**1.17 - “Remittance form”** means Remittance Form (DHS Form No. 9045).

**1.18 - “Self-sufficient minor” or “Minor capable of medical consent”** means a person under the age of 18 who can make medical decisions for himself/herself, who is at least 15 years of age, lives apart from his/her parents or legal guardians, manages his/her own finances, and whose parents/legal guardians are not liable for the minor’s medical care. This conforms to Section 6922 of the Family Code.

**1.19 - “Serious medical condition”** means any of the following medical conditions: acquired immune deficiency syndrome, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either: (1) substantially limits the ability of the person to conduct one or more major life activities, as defined in the Americans with Disabilities Act of 1990; or (2) if not alleviated, may cause serious harm to the patient’s safety or physical or mental health.

**1.20 - “Unique user identification number (UUID Number)”** means the unique number for each identification card created by the MMAS.

## **2.0 - Processing Application**

### **2.1 - Provision of Application Form to Applicants**

The administering agency will provide the Application/Renewal Form (DHS Form No. 9042) to any person requesting one. A person incarcerated in a jail, correctional facility, or other penal institution shall not be prohibited from obtaining and submitting an application.

### **2.2 - Receipt of Application Form**

Signed and completed applications with supporting documentation must be submitted in person at the office of the administering agency or other designated site. This is to confirm identity and allow for photographs. If the applicant has a primary caregiver and intends to apply for an MMIC for the primary caregiver, the primary caregiver must accompany the qualified patient at the time of submission of the application for the primary caregiver. If the patient's application includes a primary caregiver, the administering agency must determine if he/she meets the qualifying conditions for being a caregiver, as defined in this handbook in Section 1.15. If the applicant has more than one caregiver (up to three employees in a health care facility), a separate Application Form should be completed for each caregiver. If the applicant is unable to make his or her own medical decisions, the application may be made by the applicant's legal representative.

Upon receipt of the completed application, the administering agency must mark the date of receipt on the application, and may provide a copy to the applicant. The administering agency will have 30 days from receipt of the completed application (see Section 3.1 for exception) to verify accuracy of information contained in the application and approve or deny the application. If the applicant is less than 18 years of age and is not an emancipated minor or a self-sufficient minor, the administering agency must contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with the legal authority to make medical decisions to verify the information on the Application Form.

### **2.3 - Collecting Fees**

Applicants must provide the administering agency with the application fee at the time the completed application is submitted. Applications without fees cannot be processed. Fees owed to CDHS are non-refundable. The CDHS portion of the application and renewal fees is \$13 per MMIC. Each administering agency may apply additional fees to cover their expenses. Administering agencies are responsible for collecting all application fees and ensuring that sufficient funds are available when applicants use checks for payment.

### **2.4 - Medi-Cal Fee Reduction**

Upon satisfactory proof of eligibility and participation in the Medi-Cal Program, at the time of application, a Medi-Cal beneficiary will receive a 50 percent reduction in fees. If the

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applicant qualifies for this fee reduction and has a primary caregiver, the fee for the primary caregiver's MMIC will also be reduced to \$6.50.

## **2.5 - Medi-Cal Determination**

The administering agency is responsible for determining the Medi-Cal beneficiary status of the applicant. The determination of fees based on Medi-Cal beneficiary and participation status is made at the time the completed application is submitted.

Because not all benefits are Medi-Cal, aid codes may be of assistance in determining Medi-Cal participation. You may obtain information on Medi-Cal aid codes by using the following internet pathway:

- Go to: [www.medi-cal.ca.gov](http://www.medi-cal.ca.gov)
- On the left of your screen, under "Provider Resources" click "User Guides."
- On the left side of the screen, in the Provider Manuals list box, select any entry.
- In the search box, type "Aid Codes Master Chart."
- Click on "Aid Codes Master Chart aid codes," which should be among the first listed.
- The "Aid Codes Master Chart" will provide information on Medi-Cal aid codes.

There are a number of different ways to determine Medi-Cal eligibility. A county may also verify eligibility by using their county business practices. One method may be to use the Medi-Cal Internet Transactions located at [www.medi-cal.ca.gov](http://www.medi-cal.ca.gov):

- Click "Transaction Login" link.
- Sign up for the Medi-Cal internet Transactions by completing the Medi-Cal Point of Services Network/Internet Agreement.
- Type the "User ID Number," then the "Password."
- Click "Real Time Internet Eligibility – Single Subscriber."
- Type in the client's information from his or her card and press "Enter."
- The next screen provides information regarding eligibility.

## **2.6 - Designating if the Application is for the Patient, Caregiver, or Both**

An applicant must designate on the Application Form if he/she is applying for himself or herself, a primary caregiver, or both. Only a qualified patient may apply for an MMIC for himself/herself and/or his/her primary caregiver. A primary caregiver may not apply for an MMIC unless he/she is also the legal representative of the qualified patient. A primary caregiver must be at least 18 years of age, unless he/she is the parent of a minor child who is a qualified patient, or if the primary caregiver is entitled to make medical decisions for the applicant and meets all other criteria for being a caregiver, as defined in Section 1.15. Persons who are incarcerated or detained, parolees, probationers, or are criminal defendants released on bail may not be denied an MMIC for these reasons.

When a qualified patient with an MMIC changes or adds a primary caregiver and the new primary caregiver is seeking a card, the qualified patient must apply in person with the new primary caregiver to submit an Application Form and any supporting documentation for the

new primary caregiver. In the case of a qualified patient with multiple caregivers, all caregivers must be employees of a health care facility, residential care facility, clinic, home health agency, or hospice. If the primary caregiver being added exceeds the limit of three primary caregivers, then the qualified patient can choose to either have the UUID of an existing primary caregiver deactivated or, not add the new primary caregiver. The administering agency needs to ensure that the qualified patient does not exceed the limit of three primary caregivers for the purposes of the MMP. See Section 1.15 for a more detailed definition of a primary caregiver.

Whether adding or changing a primary caregiver, the administering agency should verify that the qualified patient's MMIC is valid. For the new primary caregiver's card, the MMAS default expiration date of one year will need to be manually adjusted in the MMAS, since the expiration date of the new primary caregiver will need to be the same as originally established for the qualified patient. The administering agency needs to notify the State MMP Operations Coordinator in writing to invalidate the UUID of the former primary caregiver, if any. See Section 7.0 for contact information for the State MMP. This written notification can be made by fax addressed to the attention of the Operations Coordinator. Include a copy of the confirmation screen to ensure the correct UUID is deactivated. The Operations Coordinator will confirm deactivations by e-mail. The former primary caregiver must return his/her MMIC for confidential destruction by the administering agency.

## **2.7 - Confirmation of Identity of Applicant, Caregiver, and Legal Representative**

The administering agency must verify the identity of the applicant or his or her legal representative and the designated primary caregiver, if any. This is recommended to occur at the time of application. A government issued photo-identification card must be provided as proof of identity. However, if the applicant is under the age of 18, a certified copy of a birth certificate will serve as sufficient proof of identity.

## **2.8 - Information Verification**

The administering agency may request appropriate documentation to substantiate information provided in the application.

## **2.9 - Medical Documentation**

The applicant must provide the administering agency with written documentation completed by the applicant's attending physician that is in his/her medical records which states that the applicant has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate. The attending physician may complete the Written Documentation of Patient's Medical Records Form (DHS Form No. 9044) and the applicant may submit this form to serve as the medical documentation.

## **2.10 - Proof of Residency**

Qualified patients must reside in the California county where the application is submitted and must provide proof of residency. Primary caregivers may not need to reside in the



same county as the applicant; however, information of their residency is needed to determine if they qualify as a primary caregiver. Proof of residency may consist of the following:

- (1) A current and valid California motor vehicle driver's license or California Identification Card issued by the California Department of Motor Vehicles (DMV) in their name bearing their current address within the county. This includes DMV's DL 43 "Change of Address Certification Card."
- (2) A current and valid California motor vehicle registration bearing their name and their current address within the county.
- (3) A current rent or mortgage receipt or utility bill in their name bearing their current address within the county.

## **2.11 - Photographing Applicant and Primary Caregiver**

The identification card must contain a photo identification of the cardholder. The administering agency must take an electronically transmissible photo of the applicant and the designated primary caregiver, if any. This is recommended to occur at the time of submission of the application. The photo will be used for creating the MMIC and must meet the following requirements: the camera must be at least a 2.0 mega pixel quality; the photo must be at least 300 dpi (dots per inch; 600 dpi preferred) resolution or better and must be in a Joint Photographic Expert's Group (JPEG) format to send to CDHS; the background must be a white or off-white non-glare surface, and the room should have minimal or no natural light; the applicant or caregiver should face the camera and assume a neutral expression, removing hats, scarves, sunglasses, headbands, or any articles that obscure facial features (hairstyles that obstruct facial features below the forehead are not allowed); the person being photographed should stand three to four feet away from the camera; the area photographed should include the top of the shoulders to a small portion of blank space above the head. This electronically transmissible photo will be included in the information entered into the MMAS.

## **2.12 - Replacement and Renewal MMIC**

To replace a lost, stolen, or damaged card, the applicant must reapply for a new MMIC and repay the current fee. The administering agency needs to notify the MMP Operations Coordinator in writing as soon as possible to have the UUID Number invalidated for the lost, stolen, or damaged MMIC. See Section 7.0 for contact information for the State MMP. This written notification can be made by fax addressed to the attention of the Operations Coordinator. Include a copy of the confirmation screen to ensure the correct UUID is deactivated. The Operations Coordinator will confirm deactivations by e-mail.

**Card Entry Confirmation - Microsoft Internet Explorer**

Address: <http://appstest.intra.dhs.ca.gov/MMASWeb/CardEntry2.aspx>

**Automated System**

Menu Card Entry Card Query Reports Documentation

**Card Entry Confirmation**

The card application has been uploaded successfully and cannot be modified. Below is the card identification number that will be printed on the card for verification purposes. This screen is for record keeping purposes. Please make a screen-print prior to exiting this screen.

<b>Card Status:</b>	Valid	<b>Card Photo Image</b>
<b>Card ID Number:</b>	XXXXXXXXXX	
<b>Card Type:</b>	New	
<b>Entry Date:</b>	5/16/2005	
<b>Date of Expiration:</b>	5/17/2006	
<b>Cardholder Type:</b>	Patient	
<b>Medi-Cal Beneficiary:</b>	No	
<b>Administering Agency:</b>	Golden State County Public Health Dept.	
<b>Administering Agency Phone:</b>	(800) 555-1234	

NOTE: The data as displayed on this screen cannot be retrieved or viewed after leaving this screen. If you wish to save or print this record, you must do so prior to exiting this screen.

**Exit**

To confirm the validity of the Card ID Number go to: [www.calmma.ca.gov](http://www.calmma.ca.gov)

Done Start [Inbox - Microsoft Out... Medical Marijuana Ma... Pictures Start Menu Card Entry Confirm... Medical Marijuana Ma... 2:10 PM]

Once the MMIC for an applicant or primary caregiver expires, the applicant must reapply and repay the fee for a new card (renewal). When processing a renewal, the administering agency will have the option of referring to applications and supporting documentation on file, or requiring applicants to submit new applications and supporting documentation as appropriate. Information in applications and supporting documents must be verified.

Renewing an MMIC requires the same process as applying for a new MMIC. The client will need to pay the fee and submit the form and supporting documentation as outlined in Section 2.0. Clients may wish to begin the process of obtaining their new MMICs prior to the expiration of their current MMICs. When a client wishes to renew an MMIC before his or her current MMIC expires, the administering agency should not invalidate the UUID prior to the expiration date until the client receives his or her new MMIC.

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### **3.0 - Approval, Denial, and Appeal Process**

#### **3.1 - Completed Application Form and Supporting Documentation**

The Application Form must be completed and signed. The applicant must also provide all required supporting information, including medical documentation, proof of residency, proof of identity, documents that may be needed when a minor applies, and proof of being a Medi-Cal beneficiary if the 50 percent fee reduction is being requested. It is recommended that the administering agency perform an initial review of the Application Form at the time the applicant applies. At that time, any additional information or necessary documents that have not been provided should be requested. The administering agency should date and initial actions taken and/or requirements met using either the Verification Checklist for the Application Form or a form created by the administering agency and attach this documentation to the Application Form. No employee of an administering agency should process an Application Form for himself or herself or for a friend or family member.

The administering agency must notify the applicant of any deficiency within the 30-day processing period. The applicant is responsible for correcting deficiencies and has 30 days from the date of notice to provide missing information and documentation. If the applicant provides the missing information or documentation within the 30 days of notice, the administering agency has the remainder of the initial 30-day processing period or 14 days, whichever is more, to approve or deny the application.

#### **3.2 - Verification**

The administering agency is required to verify within 30 days from receipt of the application the accuracy of information contained in the application, and approve or deny the application. The administering agency may request appropriate documentation to verify the information provided in the application. The administering agency should use either the Verification Checklist for the Application Form or use a form created by the administering agency to initial and date verifications. This documentation should be attached to the Application Form. If the applicant is less than 18 years of age and is not an emancipated minor, a self-sufficient minor, or a minor capable of medical consent, the administering agency must contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions to verify the accuracy of information on the Application Form. The administering agency shall contact the office of the attending physician listed on the application by facsimile, telephone, or mail to confirm that the medical documentation submitted by the patient are true and correct copies of those contained in the attending physician's office records. The medical documentation must state that the person has been diagnosed with a serious medical condition, as described in Section 1.19. CDHS offers attending physicians the use of the Written Documentation of Patient's Medical Records Form (DHS Form No. 9044) to serve as the medical documentation. The administering agency may verify this information with the attending physician or with the attending physician's staff person acting on behalf of the attending physician. The administering agency must verify with the Medical Board of California or the Osteopathic Medical Board of California

(OMBC) that the attending physician identified in the application has a license in good standing to practice medicine or osteopathy in California. This verification may be done by telephone or online. If the results of an online inquiry to the OMBC are negative, the administering agency should contact the OMBC by telephone to confirm that the results of the online inquiry are accurate. Contact information for these medical boards is listed below:

Medical Board of California  
Telephone: (916) 263-2382  
Web page: <http://www.medbd.ca.gov>

Osteopathic Medical Board of California  
Telephone: (916) 263-3100  
Web page: <http://www.dca.ca.gov/osteopathic>

### **3.3 - Transmission of Data to CDHS**

Upon approval of an application, or when an emergency card is to be issued, the administering agency must submit data through the MMAS within 24 hours or by the end of the next business day, review the information submitted on the screen for accuracy and quality control, and obtain a screen print of the submitted information for the administering agency's records. Please refer to the MMAS User's Manual for specific instructions. The administering agency may provide a copy of the screen print to the applicant or primary caregiver until the MMIC is received.

### **3.4 - Approvals**

The administering agency may approve the application only if all of the following occur:

- 1) The application form is complete and signed.
- 2) The applicant has provided sufficient proof of residency within the county.
- 3) The identity of the applicant and the designated primary caregiver, if any, has been verified.
- 4) The applicant has paid the appropriate fee.
- 5) A sufficient electronically transmissible photo has been obtained.
- 6) The administering agency has verified that the attending physician has a license in good standing to practice medicine or osteopathy in the State.
- 7) The administering agency has confirmed that the medical documentation provided is a true and correct copy of the documents contained in the attending physician's office records stating that the applicant has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

The administering agency must make the MMIC available to the applicant and his/her primary caregiver within five business days from the approval date of the application. After successful transmission of data, as described in Section 3.3, the administering agency may notify the client of the approval. The administering agency may include a screen print from the MMAS and may offer the client the option of having the MMIC

mailed. The administering agency will receive the MMIC within three business days of entering the card application information into the MMAS.

### **3.5 - Emergency Cards**

The administering agency may issue a temporary emergency card if an applicant can establish that an MMIC is needed on an emergency basis and has submitted a completed Application Form with supporting documentation, had their photograph taken by the administering agency (or the administering agency has otherwise obtained an electronically transmissible photo of the applicant), and the applicant paid a fee for both the emergency card and the MMIC. The fee for the emergency card will be equal to and in addition to the fee for the MMIC. If the administering agency grants a temporary emergency card to an applicant, the primary caregiver, if applicable, may also receive a temporary emergency card. The applicant must also pay the fee for the primary caregiver's emergency card and MMIC. The administering agency must submit data for the emergency card through the MMAS within 24 hours or by the end of the next business day and will need to modify the expiration date from the default of one year. Statute provides that a temporary emergency card shall be valid for 30 days from the date of issuance. For example, if an applicant applies for and is granted a temporary emergency card on April 1, and the data is entered into the MMAS on that day, the first day the card would be valid would be April 2. The thirtieth day the card would be valid would be May 1, and the Date of Expiration would be May 2. An emergency card may be extended an additional 30 days if approved by the administering agency and if the applicant continues to meet the requirements. Each extension requires the production of a new emergency card, UUID, and fee.

The administering agency may issue a copy of the MMAS print screen to the applicant or primary caregiver to serve as an initial temporary emergency card. The administering agency will receive a plastic emergency card within three business days of submitting the emergency card application information into the MMAS.

Upon approval of the application, the administering agency will submit data for the MMIC through the MMAS using the default expiration date of one year from the date of entering the data. The UUID generated for the MMIC will differ from the UUID used for the emergency card. When the administering agency issues the MMIC, it is recommended that the emergency card be returned to the administering agency for confidential destruction and that the administering agency notify CDHS in writing to invalidate the UUID. See Section 7.0 for contact information for the State MMP. Please refer to the MMAS User's Manual for specific instructions.

### **3.6 - Denials**

The administering agency may deny an application for an MMIC for any of the following reasons:

- (1) The applicant did not provide all of the required information, and upon notice of the deficiency, did not provide the information within 30 days of the notice.

- (2) The administering agency determined some of the submitted information was false.
- (3) The applicant did not meet the required criteria, as specified in this handbook and pursuant to Section 11362.74(a) of the H&S Code and regulations for the MMP.

The administering agency should notify the applicant of the denial of his/her application within a reasonable period of time and note the date of denial on the Application Form. The applicant will have 30 days from the date they were notified of the denial to appeal the decision to CDHS using the Application Denial Appeals Form (DHS Form No. 9044). If an application has been denied by the administering agency, the applicant may not reapply for six months from the date of denial unless authorized by the administering agency or a court of competent jurisdiction.

### **3.7 - Appeals Application Form**

The administering agency must make the Application Denial Appeals Form (DHS Form No. 9044) available to applicants. Only an applicant or his/her legal representative may appeal a denied application. An applicant who wishes to appeal his/her denial must complete an Appeals Form and submit it to CDHS no later than 30 calendar days from the date of the denial notice.

### **3.8 - Appeals Process**

Applicants may appeal a denied application for themselves or their caregivers to the CDHS within 30 days from the date they were notified of the denial. When an appeal is submitted, CDHS will request a copy of the appellant's file from the administering agency. The administering agency will have ten business days to supply CDHS with copies of all information and documents contained in the appellant's file. CDHS will inform the appellant and the administering agency within 30 days of receipt of the appellant's file of the approval or denial of the appeal. In the case of an approved appeal, the administering agency will enter the data in the MMAS within five business days from the date of notification from CDHS, and the administering agency will issue an MMIC to the appellant or designated primary caregiver within five business days of entering the data into the MMAS. All decisions on appeals by CDHS are final.

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## **4.0 - Receipt and Issuance of Cards**

### **4.1 - Receipt of MMIC**

The MMIC will be shipped by overnight delivery service to the administering agency within three business days of data being entered in the MMAS. The administering agency must receive an MMIC during normal business hours in a secure manner. The sender shown on the shipment will be CDHS, not the card vendor. While in the administering agency's possession, an MMIC must be securely maintained at all times in accordance with confidentiality laws and requirements of the Health Insurance Portability and Accountability Act (HIPAA). Upon receipt, the administering agency must review the MMIC for inaccuracies and/or damage. The following information on an MMIC must be reconciled with data in the administering agency's records: the photograph, UUID number, name and phone number of the administering agency, and expiration date.

An MMIC received from the card vendor with inaccuracies, damage, or which is otherwise unusable, must be destroyed confidentially and replaced at no cost to the client or the administering agency. If an MMIC is damaged or is otherwise unusable, the administering agency must notify the Operations Coordinator immediately. The Operations Coordinator will work with the administering agency and the card vendor to replace the MMIC at no extra cost to the applicant. The administering agency must notify the Operations Coordinator at the MMP of all destroyed cards by fax and include a copy of the confirmation screen in order to deactivate the correct UUID number of the MMIC. See Section 7.0 for contact information. The administering agency should contact the MMP Operations Coordinator as soon as possible to report destroyed cards. The Operations Coordinator will confirm deactivations by e-mail. The person who was to receive the destroyed MMIC must be notified of the delay in the issuance of his/her MMIC and if he/she will need to retake the photograph or if the card must be reprinted due to unacceptable print quality. In the case of a card that the card vendor is unable to produce, due to an unsatisfactory photo, the card vendor will contact the MMP Operations Coordinator, who will in turn contact the administering agency. The administering agency will be responsible for providing a new electronically transmissible and usable photo to the MMP Unit, who will forward the photo to the card vendor along with the UUID number of the damaged card.

### **4.2 - Issuance of Cards**

The applicant's MMIC must be made available to an applicant within five days of the application's approval. The MMIC must be issued to the person for whom the MMIC was produced: either the qualified patient or the primary caregiver. If the applicant or primary caregiver does not pick up his/her MMIC, the administering agency must retain the MMIC on file for the duration of the MMIC. If the MMIC is not picked up before the expiration date, the administering agency must confidentially destroy the MMIC.

### **4.3 - Invalidating Cards**

A patient who obtains an MMIC must notify the administering agency within seven days of any change in his/her attending physician or primary caregiver. If a person who possesses an MMIC fails to comply, the card shall be deemed expired. If the card expires, the MMIC of any designated primary caregiver of the patient shall also expire. If the caregiver has changed, he/she must return the MMIC to the administering agency for "confidential destruction," and the administering agency needs to notify CDHS in writing to invalidate the UUID. See Section 7.0 for contact information for the State MMP.



## **5.0 – Administering Agency Records**

### **5.1 – Maintenance of County MMP Records**

The administering agency must maintain records of the MMP, pursuant to H&S Code Section 11362.71(b)(3), which states “Every county health department, or the county’s designee, shall do all of the following:……. Maintain records of identification card programs.”

### **5.2 - Confidentiality**

The administering agency must implement and utilize appropriate procedures and protocols to ensure compliance with all applicable confidentiality and HIPAA laws and regulations.

## **6.0 - Remittance of Funds by Administering Agency to CDHS**

### **6.1 - Remittance Procedures**

CDHS fees are non-refundable. The administering agency has the option of retaining or refunding the county portion of the fee in the case of a denied application. Fees will be remitted to CDHS on a monthly basis. The administering agency must remit the State's portions of the fees to CDHS within 60 calendar days after the end of the remittance month. Remittance must be by check or money order issued by the administering agency and made payable to CDHS.

Send check or money order to:

#### If by U.S. Postal Service delivery

Remittance Desk  
Medical Marijuana Program Unit  
Office of County Health Services Branch  
California Department of Health Services  
MS 5203  
P.O. Box 997413  
Sacramento, CA 95899-7413

#### If by courier delivery

Remittance Desk  
Medical Marijuana Program Unit  
Office of County Health Services Branch  
California Department of Health Services  
1501 Capitol Avenue, Suite 71.5195  
MS 5203  
Sacramento, CA 95814-5005

### **6.2 - Remittance Activity Information**

Within 60 calendar days after the end of the remittance month, the administering agency will submit remittance activity information to CDHS. This information will be provided in the Remittance Form (DHS Form No. 9045). The administering agency must validate and attach to the Remittance Form the MMP "County Fee Report", provided by CDHS, as backup documentation for collection and remittance of fees.

### **6.3 - Dishonored Checks from the Administering Agency**

A current accounts receivable claim will be established for the outstanding balance of checks returned without payment for any reason, including but not limited to, insufficient funds, account closure, or stop payment. The following collection efforts will be applied: (1) A 30, 60, and 90 day delinquent account letter will be sent to the debtor; and (2) if the balance remains unpaid after three letters have been sent, delinquent accounts may be referred to an outside collection agency.

A current accounts receivable claim is a receivable claim that has been billed and is expected to be collected in one year. If the administering agency previously remitted a check to CDHS that was returned without payment, the CDHS may require payment by cash, certified check, cashiers check, or money order. In accordance with Government Code Section 6157, a \$25 charge will be assessed for each check returned without payment for any reason.

## **7.0 - Contact Information**

### **7.1 - Medical Marijuana Program (MMP) Contact Information**

Medical Marijuana Program Unit  
Office of County Health Services  
California Department of Health Services Branch  
MS 5203  
P.O. Box 997413  
Sacramento, CA 95899-7413

Telephone: (916) 552-8600

Fax: (916) 552-8038

E-Mail: [mmpinfo@dhs.ca.gov](mailto:mmpinfo@dhs.ca.gov)

Program Website: [www.dhs.ca.gov/mmp](http://www.dhs.ca.gov/mmp)

All MMP forms may be downloaded from this web site or by contacting the MMP. To contact the Operations Coordinator, please use the MMP information above. Ask to be referred to the Operations Coordinator and your call or e-mail will be forwarded.

### **7.2 - Administering Agency Contact Information**

The administering agency must provide CDHS current contact information, including phone number and address. If the administering agency's contact information changes, the administering agency must notify CDHS immediately.

## Appendix 1

### The Compassionate Use Act of 1996, Health and Safety Code Section 11362.5 (Proposition 215)

#### §11362.5.

- (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.
- (b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:
  - (A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.
  - (B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
  - (C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.
- (2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.
- (c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.
- (d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.
- (e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

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## Appendix 2

### SB 420, Health and Safety Code, Sections 11362.7 through 11362.83

BILL NUMBER: SB 420 CHAPTERED

BILL TEXT

CHAPTER 875

FILED WITH SECRETARY OF STATE OCTOBER 12, 2003

APPROVED BY GOVERNOR OCTOBER 12, 2003

PASSED THE SENATE SEPTEMBER 11, 2003

PASSED THE ASSEMBLY SEPTEMBER 10, 2003

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN ASSEMBLY SEPTEMBER 4, 2003

AMENDED IN ASSEMBLY AUGUST 18, 2003

AMENDED IN SENATE MAY 27, 2003

INTRODUCED BY Senator Vasconcellos

(Principal coauthor: Assembly Member Leno)

(Coauthors: Assembly Members Goldberg, Hancock, and Koretz)

FEBRUARY 20, 2003

An act to add Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

#### LEGISLATIVE COUNSEL'S DIGEST

#### SB 420, Vasconcellos. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. The bill would specify the department's duties in this regard, including developing related protocols and forms, and establishing application and renewal fees for the program.

The bill would impose various duties upon county health departments relating to the issuance of identification cards, thus creating a state-mandated local program. The bill would create various crimes related to the identification card program, thus imposing a state-mandated local program. This bill would authorize the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations, as specified. The bill would also authorize the Attorney General to recommend modifications

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to the possession or cultivation limits set forth in the bill. The bill would require the Attorney General to develop and adopt guidelines to ensure the security and nondiversion of marijuana grown for medical use, as specified.

The California Constitution requires the State to reimburse local agencies and school districts for certain costs mandated by the State. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000. This bill would provide that no reimbursement is required by this act for specified reasons.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

(a) The Legislature finds and declares all of the following:

- (1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.
- (2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.
- (3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.
- (4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.

(b) It is the intent of the Legislature, therefore, to do all of the following:

- (1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.
- (2) Promote uniform and consistent application of the act among the counties within the state.
- (3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

- (c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.
- (d) The Legislature further finds and declares both of the following:
  - (1) A state identification card program will further the goals outlined in this section.
  - (2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health and Safety Code need not possess an identification card in order to claim the protections afforded by that section.
- (e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

## SECTION 2.

Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

### Article 2.5. Medical Marijuana Program

§ 11362.7. For purposes of this article, the following definitions shall apply:

- (a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.
- (b) "Department" means the State of California Department of Health Services.
- (c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.
- (d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:
  - (1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the

owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

- (2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
  - (3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.
- (e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.
- (f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.
- (g) "Identification card" means a document issued by the State of California Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
- (h) "Serious medical condition" means all of the following medical conditions:
- (1) Acquired immune deficiency syndrome (AIDS).
  - (2) Anorexia.
  - (3) Arthritis.
  - (4) Cachexia.
  - (5) Cancer.
  - (6) Chronic pain.
  - (7) Glaucoma.
  - (8) Migraine.
  - (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
  - (10) Seizures, including, but not limited to, seizures associated with epilepsy.
  - (11) Severe nausea.
  - (12) Any other chronic or persistent medical symptom that either:
    - (A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
    - (B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.



- (i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

§ 11362.71.

(a)

- (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.
- (2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

- (1) Provide applications upon request to individuals seeking to join the identification card program.
- (2) Receive and process completed applications in accordance with Section 11362.72.
- (3) Maintain records of identification card programs.
- (4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).
- (5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

- (1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.
- (2) Application forms that shall be issued to requesting applicants.
- (3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is

reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

- (f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

§ 11362.715.

- (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:
  - (1) The name of the person, and proof of his or her residency within the county.
  - (2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.
  - (3) The name, office address, office telephone number, and California medical license number of the person's attending physician.
  - (4) The name and the duties of the primary caregiver.
  - (5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.
- (b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:
  - (1) A conservator with authority to make medical decisions.
  - (2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.
  - (3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.
- (c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.
- (d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

§ 11362.72.

- (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:
  - (1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

- (2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.
  - (3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.
  - (4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.
  - (5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.
- (b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:
- (1) A unique user identification number of the applicant.
  - (2) The date of expiration of the identification card.
  - (3) The name and telephone number of the county health department or the county's designee that has approved the application.
- (c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.
- (d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

§ 11362.735.

- (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:
- (1) A unique user identification number of the cardholder.
  - (2) The date of expiration of the identification card.
  - (3) The name and telephone number of the county health department or the county's designee that has approved the application.
  - (4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.
  - (5) Photo identification of the cardholder.

- (b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

§ 11362.74.

- (a) The county health department or the county's designee may deny an application only for any of the following reasons:

- (1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.
- (2) The county health department or the county's designee determines that the information provided was false.
- (3) The applicant does not meet the criteria set forth in this article.

- (b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

- (c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

§ 11362.745.

- (a) An identification card shall be valid for a period of one year.
- (b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.
- (c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

§ 11362.755.

- (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.
- (b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

§ 11362.76.

- (a) A person who possesses an identification card shall:
- (1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.
  - (2) Annually submit to the county health department or the county's designee the following:
    - (A) Updated written documentation of the person's serious medical condition.
    - (B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.
- (b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.
- (c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.
- (d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

§ 11362.765.

- (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.
- (b) Subdivision (a) shall apply to all of the following:
- (1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.
  - (2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.
  - (3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills

necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

- (c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

§ 11362.77.

- (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.
- (b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.
- (c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).
- (d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.
- (e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.
- (f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

§ 11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

§ 11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

§ 11362.785.

- (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.
- (b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.
- (c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.
- (d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

§ 11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

- (a) In any place where smoking is prohibited by law.
- (b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.
- (c) On a school bus.
- (d) While in a motor vehicle that is being operated.
- (e) While operating a boat.

§ 11362.795.

- (a)
  - (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

- (2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.
- (3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.
- (4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b)

- (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.
- (2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.
- (3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.
- (4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

§ 11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

§ 11362.81.

(a) A person specified in subdivision (b) shall be subject to the following penalties:

- (1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars (\$1,000), or both.
- (2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

- (1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

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- (2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.
- (3) A person who counterfeits, tampers with, or fraudulently produces an identification card.
- (4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

§ 11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

§ 11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

### SECTION 3.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state because this act includes additional revenue that is specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate, within the meaning of Section 17556 of the Government Code.

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